



INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-930

Certain Laser Abraded Denim Garments

Commission Determination to Review Order No. 43, and on Review Vacating that Order as Moot; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review Order No. 43 issued by the presiding administrative law judge (“ALJ”). On review, the Commission has determined to vacate Order No. 43 because the law firm disqualification at issue has become moot. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this

matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 23, 2014, based on a complaint filed by RevoLaze, LLC and TechnoLines, LLC, both of Westlake, Ohio (collectively, "RevoLaze"). 79 *Fed Reg.* 56828 (Sept. 23, 2014). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laser abraded denim garments. The complaint alleged the infringement of seventy-one claims of six United States patents. The notice of institution named twenty respondents, including The Gap, Inc. of San Francisco, California ("Gap"), who, one-by-one were terminated from the investigation. On November 18, 2015, the Commission terminated the last remaining respondents from the investigation on the basis of settlement and withdrawal of the complaint. 80 *Fed. Reg.* 73209, 73210 (Nov. 24, 2015).

However, previously in the investigation, the then-presiding ALJ disqualified complainants' counsel Dentons US LLP ("Dentons US") in an order that was not an initial determination ("ID"). Order No. 43 (May 7, 2015). Subsequently, the ALJ granted (as an ID) Dentons US's motion to intervene regarding its disqualification, Order No. 82 (Aug. 7, 2013), but denied (as an order) its motion for reconsideration of Order No. 43 as well as its request for leave to seek interlocutory review before the Commission, Order No. 83 (Aug. 7, 2015); *see* 19 C.F.R. § 210.24 (interlocutory review by the Commission). The Commission determined not to review Order No. 82. Notice (Aug. 26, 2015).

On October 27, 2015, in response to the issuance of an ID (Order No. 106), which terminated the investigation before the ALJ, Dentons US filed a petition for Commission review of Order Nos. 43 and 83. *See* 19 C.F.R. § 210.24 (rulings by the ALJ “on motions may not be appealed to the Commission prior to the administrative law judge’s issuance of an initial determination”). On November 3, 2015, and November 9, 2015, the Office of Unfair Import Investigations and Gap, respectively, opposed Dentons’ petition.

The Commission has determined to review Order No. 43, and, on review, has determined to vacate the disqualification decision as moot. In view of the final disposition of the investigation as to all respondents, the issue of Dentons US’s disqualification has no practical effect on this investigation.

Although the Commission has the discretion to address issues that have become moot, it has determined not to do so here. The disqualification in this investigation turns on whether Dentons US and Dentons Canada LLP as members of Salans FMC Denton Group (“Dentons Verein”) should be treated as a single law firm under the American Bar Association’s Model Rules of Professional Conduct (“Model Rules”) in this investigation. Answering that question would require further proceedings, and potentially additional factfinding. In particular, Comment 2 to Model Rule 1.0 sets forth several factors to consider in determining whether a group of lawyers constitute a law firm, including (1) how the lawyers present themselves to the public, (2) whether the lawyers conduct themselves as a law firm, (3) the terms of any formal agreement among the lawyers, and (4) whether the lawyers have mutual access to client information. Here, the record lacks sufficient evidence on these factors, especially as to the third factor, because the Dentons Verein organizational agreements have not been made part of the

record of the investigation. The Commission has decided that the added delay, burdens, and expenses that would be incurred by the parties and the Commission in resolving these issues are unjustified given the termination of the investigation as to all respondents.

Accordingly, the Commission has determined to review and vacate Order No. 43, without deciding whether the disqualification in this investigation was appropriate. The reasoning in support of the Commission's decision will be set forth more fully in a forthcoming opinion.

In light of its determination above, the Commission has determined not to review Order No. 83, which denied as untimely a motion of Dentons US and Revolaze for reconsideration of Order No. 43 or for interlocutory review by the Commission.

The Commission notes that in April 2016, it received several submissions from RevoLaze and Dentons US after the deadlines for submissions set forth in 19 C.F.R. § 210.43 had passed. The Commission rejects these submissions as untimely and procedurally improper, and did not consider them in making its determination.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: April 12, 2016

[FR Doc. 2016-08845 Filed: 4/15/2016 8:45 am; Publication Date: 4/18/2016]